



PWD/Administration Office Administrative Rule No. 208

Improvements Agreement & Security Procedures

Adopted: April 15, 2011

Revised: _____

PURPOSE: Outline the requirements and administrative procedures for submittal of an improvements agreement and security for subdivision improvements as a condition for granting approval of the final plat, in accordance with Article 9 of the City Subdivision Regulations. (Article 9, Public and Private Improvements)

APPLICABILITY: City Engineering and Public Works Department Administrative Staff, or any other staff assigned to subdivision review.

DISCUSSION: These procedures shall govern the requirements for submission, extension, reduction, and release of a security to guarantee subdivision improvements, along with the corresponding improvements agreement, and the process for collection of funds by drawing against a security.

All forms are available on the City of Missoula website (Project Development Toolbox). For all forms related to this Administrative Rule, go to the Stage 4 Summary of the Project Development Toolbox, or contact the City Engineering office for assistance.

1. Improvements Agreement & Estimate of Probable Cost Required

City Engineering requires that an improvements agreement and an estimate of probable cost (City Engineering required format) be submitted with each of the securities (letter of credit, CD, bond, cash, cashier's check, etc.) that guarantee subdivision improvements. The estimate of probable cost and improvements agreement must be submitted and approved by City Engineering. Once approved, a signed original improvements agreement shall be submitted to City Engineering, but will be retained by the City Clerk's Office.

A security may be submitted at this time for City Engineering review. The security must guarantee the amount listed in the previously approved estimate of probable cost and improvements agreement. Upon approval by City Engineering, the signed original security shall be delivered to City Engineering, but will be retained by the City Clerk's Office.

The Public Works ProjTrak Coordinator tracks all improvements and security agreement dates for expiration in the ProjTrak database. If applicable, City Engineering will mail out a reminder of the pending improvements agreement expiration to the developer and developer's representative, approximately 2-3 months prior to expiration.

Copies of the approved estimate of probable cost and the signed improvements agreement will be placed in the appropriate City Engineering project file by the ProjTrak Coordinator.

2. Acceptable Forms of Securities

Acceptable forms of securities can be found in Article 9 of the City Subdivision Regulations, as well as this administrative rule. Any costs incurred obtaining a security from a financial institution, in good standing, must be paid by the developer. Please contact City Engineering for examples of acceptable securities.

A. Cash, Certificate of Deposit, or other Assignable Security (Surety):

1. The Surety shall be issued for a period of at least 1 year, unless a shorter timeline is approved by the City Engineer. The Surety must indicate an expiration date and shall expire at least one month after the expiration of the improvements agreement, unless another time line is agreed to by the City Engineer.
2. The Surety must be drawn on a financial institution, in good standing, and be made payable to the City of Missoula only. If it is not possible for the Surety to be made payable to the City only, developer must contact City Engineering for further instruction.
3. If the financial institution, in good standing, only issues an electronic version of the Surety, the developer must notify City Engineering for further instruction.
4. Sureties must also, at a minimum, indicate the name of the issuer/financial institution, the developer's account number upon which the Surety was drawn, the expiration date or maturity date, whether or not the Surety will automatically renew at maturity, and be signed by a representative of the financial institution.
5. The Surety will remain in effect until all subdivision improvements are completed by the developer and accepted by City Engineering, at which time the Surety will be released through City Engineering, or drawn against by City Engineering as provided below (8. Drawing Against a Security).

B. Irrevocable Letter of Credit (LOC):

1. This method is preferred by City Engineering.
2. The LOC shall be issued for a period of at least 1 year, unless a shorter timeline is approved by the City Engineer. The LOC must indicate an expiration date and shall expire at least one month after the expiration of the improvements agreement, unless another time line is agreed to by the City Engineer.
3. The LOC must be provided on the letterhead of a financial institution, in good standing, be dated and signed by an authorized representative of the financial institution from which it's drawn, include the financial institution's reference number, be drawn under the account of the developer, indicate that it is "irrevocable," be made payable to the City of Missoula only, and be signed by a representative of the financial institution. The LOC must also contain the developer's company name and the name of the subdivision. The financial institution will dictate how the City shall draw against the LOC.
4. The LOC will remain in effect until all subdivision improvements are completed by the developer and accepted by City Engineering, at which time the LOC will be released through City Engineering, or drawn against by City Engineering as provided below (8. Drawing Against a Security).

C. Performance or Property Bonds (Bond):

1. The Bond shall be issued for a period of at least 1 year, unless a shorter timeline is approved by the City Engineer. The Bond must indicate an expiration date and shall expire at least one month after the expiration of the improvements agreement, unless another time line is agreed to by the City Engineer.
2. The Bond is subject to any requirements of the bonding company.
3. The Bond must be drawn by a bonding company, or local insurance company, in good standing, and be made payable to the City of Missoula only.
4. Bonds must also, at a minimum, indicate the name of the issuer/bonding/insurance company, the name of the developer, the bond number, the expiration date, and be signed by the developer and a representative of the bonding/insurance company.
5. The Bond will remain in effect until all subdivision improvements are completed by the developer and accepted by City Engineering, at which time the Bond will be released through City Engineering, or drawn against by City Engineering as provided below (8. Drawing Against a Security).

D. Cashier's Check or Check drawn directly from a financial institution (Check):

1. The developer must receive **prior approval** from City Engineering before a Check will be accepted as collateral for outstanding subdivision improvements.
2. The Check must be made payable to the City of Missoula only.
3. The Check cannot be drawn on the developer's personal account or business account; it must be drawn upon a financial institution, in good standing, in order to be insured.
4. The Check must not expire.
5. The Check must remain in effect until all subdivision improvements are completed by the developer and accepted by City Engineering, at which time the Check will be released through City Engineering, or drawn against by City Engineering as provided below (8. Drawing Against a Security).

E. Trust Indenture:

1. Contact the City Engineering Division for **prior approval** and instruction. This method is not preferred by City Engineering.

F. Special Improvement Districts:

1. Contact the City Engineering Division for **prior approval** and instruction. This method is not preferred by City Engineering.
2. The City may agree to sell bonds or by some other means raise the funds necessary to finance subdivision improvements until costs can be recovered through assessments against lot purchasers in the subdivision. To establish this type of guarantee, the developers and owners of the property to be subdivided (if other than the developer) must submit a petition to the City Council. The City's SID policy does require that developers submit additional security to guarantee the payment of from three to five years of annual SID assessments. The City Finance Director has copies of the resolution establishing the City's SID policy.
3. The SID petition or agreement must specify that no property will be sold, rented, or leased until a special improvement district is formed and that the developers and owners will allow the City Council to create a SID for the property without protest. This waiver of the right to protest formation of a SID expires 20 years after the date the final subdivision plat is recorded with the County Clerk and Recorder.

G. Incremental Payment or Guarantee Plan:

1. City Engineering may agree to an incremental payment or guarantee plan. The improvements incurred in a prior increment must be satisfied before the development of future increments is approved.

3. Transmission of Original Security from City Engineering Division to City Clerk's Office:

- A. Make one copy of the original security. (Surety, LOC, Bond, Check, etc.)
- B. Prepare a transmittal addressed to the City Clerk. Fill in the date, name of the subdivision, the City project number it pertains to, that it was hand delivered, any identification number associated with the original security, the amount of the original security, and the name of the financial institution.
- C. Print two transmittals and sign your name on both.
- D. Fill out the Subdivision Improvement Guarantee Routing Log (Routing Diary) with the subdivision name and its City project number, the amount of the security, the date it was transmitted, the time, and your initials.
- E. Attach the original security to the first transmittal and walk it to the City Clerk's Office and give it to the Deputy City Clerk.

- F. Attach a copy of the original security to the second transmittal and give it to the ProjTrak Coordinator who will log it in the ProjTrak database and file it in the appropriate project file.
- G. Plats - If a subdivision plat is submitted to City Engineering and it contains an original security, the original security document will need to be transmitted by City Engineering Staff to the City Clerk's Office and a copy remains with the subdivision plat.

4. Extension of a Security

- A. If the improvements agreement and security are about to expire and all of the subdivision improvements being secured have not been completed, developer, or developer's representative, may request an extension (via email is acceptable) of the existing improvements agreement and security.
- B. City Engineering may request a new estimate of probable cost if the costs of construction have increased since the issuance of the existing security.
- C. An extension of the existing improvements agreement and security may be granted by the City Engineer.
- D. Developer will be required to fill out an improvements agreement amendment (Improvements Agreement Amendment) noting the new date that the subdivision improvements will be completed (the new expiration date of the improvements agreement amendment), and the new expiration date of the amended security (which will be one month after the subdivision improvements are required to be constructed) per the improvements agreement amendment. Additionally, the improvements agreement amendment will contain the new (updated) cost of construction, if applicable.
- E. An amended security will be granted for a minimum of one year unless a shorter time line is agreed to by the City Engineer.
- F. If applicable, the new estimate of probable cost, after City Engineering approval, will be retained by City Engineering in the project file.
- G. The original improvements agreement amendment will be retained by the City Clerk's Office and a copy placed in the City Engineering project file by the ProjTrak Coordinator. The original amended security will be delivered to City Engineering and transmitted to the City Clerk's Office as noted in No. 3 "Transmission of Original Security."

5. Reduction of a Security

- A. If some of the subdivision improvements, noted in the improvements agreement, or amendment, and the initial or subsequent estimate of probable cost, have been completed, the developer or developer's representative may request a reduction (via email is acceptable) of the security, or amended security, and submit a new estimate of probable cost listing the items that have not been completed.
- B. A reduction of a security, or amended security, will be granted by the City Engineer contingent upon City Engineering's verification that all completed subdivision improvements have been installed and accepted by City Engineering. Although, City Engineering's approval will be subject to the amount shown on the new estimate of probable cost for outstanding subdivision improvements.
- C. City Engineering requires that an improvements agreement amendment be submitted at this time because it will be based on only those outstanding subdivision improvements that have not been constructed and accepted by City Engineering.
- D. An amended security will be granted for a minimum of one year unless a shorter time line is agreed to by the City Engineer.
- E. The new estimate of probable cost will be retained by City Engineering in the project file.
- F. The original improvements agreement amendment will be retained by the City Clerk's Office and a copy placed in the City Engineering project file by the ProjTrak Coordinator. The original amended security will be delivered to City Engineering and transmitted to the City Clerk's Office as noted in No. 3 "Transmission of Original Security."

- G. If City Engineering, for any reason, determines that the security, or amended security, may not be reduced, City Engineering Staff will notify developer or developer's representative. City Engineering will work with developer or developer's representative on financial solutions for outstanding subdivision improvements or will start the process to draw against the security or amended security.

6. Releasing a Security

- A. The Developer or developer's representative may send a written request (via email is acceptable) to City Engineering to release the security or amended security.
- B. City Engineering will review the request and verify that all subdivision improvements have been installed and accepted by City Engineering.
- C. If City Engineering determines that the security or amended security may be released, the City Engineer will direct staff to notify the City Clerk's Office, usually via email, that the security can be released to the original issuing financial institution/bonding company/insurance company. At this time, City Engineering considers the improvements agreement or any amendments fully satisfied.
- D. Upon receiving this request, the City Clerk's Office will prepare a release letter and send it and all original securities back to the issuing institution/ bonding company/insurance company. Timing of the release of the original security instrument is at the City Clerk's discretion.
- E. The City Clerk's office sends a copy of the release letter to City Engineering. The ProjTrak Coordinator logs the release in the ProjTrak database and files the release letter in the project file.
- F. If City Engineering determines that the security or amended security may not be released, City Engineering Staff will notify developer or developer's representative of the reasons for not releasing the security or amended security.

7. Default

- A. If City Engineering determines that the developer will not construct any or all the subdivision improvements in accordance with the subdivision conditions and approved construction plans and specifications as listed in the improvements agreement, or has documented reason to believe that the developer cannot complete the subdivision improvements, City Engineering may withdraw such funds from the security, or amended security, as may be necessary to complete construction of the outstanding subdivision improvements.
- B. The general default period is the expiration date of the original, subsequent, or amended improvements agreement.

8. Drawing Against a Security

- A. The ProjTrak Coordinator pulls a copy of the improvements agreement and security, or any amendments, from the project file.
- B. A week before the improvements agreement, or any amendments, are set to expire, notify in writing (by mail or fax depending on location) the financial institution/bonding company/insurance company, through which the security was issued, of the City's intention to draw against the security, or amended security. This notification letter will be sent to the developer, the developer's representative, the City Clerk, and the City Attorney.
- C. Understand the financial institution/bonding company/insurance company's requirements to draw against the security or amended security. The financial institution may require an estimate of probable cost showing what work has not been completed and is not acceptable to City Engineering.
- D. City Engineering will present a default letter to the financial institution of the City's intention to draw against the security, or amended security, on the expiration date of the improvements agreement or amendment. This default letter will be sent to the developer, the developer's representative, the City Clerk, and the City Attorney.

- E. If the financial institution is in the City of Missoula, a representative of City Engineering may need to present the original security, or amended security, to the financial institution/bonding company/insurance company, in person, to notify the financial institution of the default of the developer. The financial institution may be able to give a check to the City immediately, or it may be mailed to the City.
- F. If the financial institution is outside the City of Missoula, then City Engineering shall contact the office listed on the security, or amended security, and obtain a fax number so that City Engineering can forward the default letter on the expiration date of the improvements agreement, or amendment, in order to notify the financial institution of the default of the developer.
- G. Once the funds securing the subdivision improvements are received by City Engineering, they will be deposited in a special account for the subdivision in question with the City Finance Office. The ProjTrak Coordinator will track this account number in the ProjTrak database in order to keep track of the funds. The City Engineer will decide when to have the outstanding subdivision improvements completed.
- H. If a subdivision improvements agreement amendment and the amended security are delivered to City Engineering prior to the improvements agreement's, or amendment's, expiration date, then notify the financial institution that the City has received and approved the required submittals and City Engineering withdraws its request to draw against the security, especially if the financial institution is out of state. If the financial institution is in the City of Missoula, this notification may not be necessary as the lending company will be aware that an amended security has been received and approved by City Engineering.

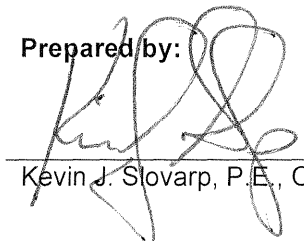
9. Warranty of Improvements

- A. The developer shall provide a two year warranty for all subdivision improvements required by the subdivision acceptance in conformance with Article 9 of the City Subdivision Regulations. The warranty must commence at the time the subdivision improvements are accepted by the City Engineer.

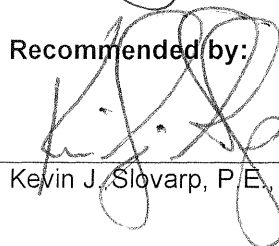
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